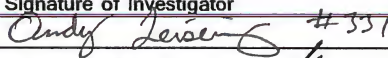





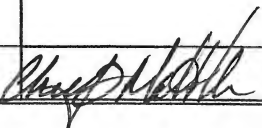


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|--|--|--|---|
| <b>VENICE POLICE DEPARTMENT</b><br><b>CITIZEN/POLICE COMPLAINT FORM</b>  |  | IA/SR/SI Complaint No.<br><br>SI 2019-004  |   |
| Person Complained Against<br>(250) Lt. Resch, (318) Sgt. Gregoire, (386) MPO Creasy, (396) MPO Kuchar, (418) Ofc. Montanez, (415) Ofc. Atwell  |  |  |   |
| Complainant<br>Chief Tom Mattmuller  | Home Address<br><br>Place of Employment  | Home Phone Number<br><br>Work Phone Number |   |
| Date/Time of Occurrence<br>12/21/2018 11:09  | Location of Occurrence<br>281 N. By Pass 41, Motel 6   |  |   |
| Witness Name<br>Chrisie Schmitz, Jacqueline Armstrong, Andrea Flores   | Home Address<br><br>Place of Employment<br>Motel 6   | Home Phone Number<br><br>Work Phone Number |   |
| Details of Complaint, Additional Witnesses, etc.<br>Review and evaluate VPD response to case 2018-002315, burglary Motel 6 on Friday December 21, 2018, to identify any violation of policy or procedures by a Supervisor/Officer to include; BURGLARY, POLICE VEHICLE OPERATION, USE OF FORCE AND LEVELS OF RESISTANCE, FIELD REPORTING, and CODE OF CONDUCT i.e., Courtesy, Abuse of Process, Operating Vehicles, Truthfulness, and Treatment of Persons in Custody, Use of Force. |  |  |   |
| Date/Time Complaint Received<br><br>4/30/2019  | Name of Person Recording Complaint<br><br>Chief Tom Mattmuller   | Unit<br><br>Administration                 |   |
| Date/Time Forwarded for Investigation<br><br>5/01/2019 0900  | Name of Investigator<br><br>Lt. Leisenring   | Unit<br><br>Patrol                         |   |
| Date/Time Investigation Completed<br>5/12/2019 2200  | Signature of Investigator<br> #531 | Unit<br>Patrol                             |   |
| Date/Time Complainant Notified<br>5/12/19  | Signature of Receiving Person<br>   | Unit<br>Administration                     |   |
| Date/Time Employee Received Copy<br>5/12/19  | Signature of Employee<br>           | Unit<br>Administration                     |   |
| <b>RECOMMENDED COMPLAINT DISPOSITION</b><br><br>Date: <u>5/12/19</u> Supervisor's Printed Name & Signature: <br><input type="checkbox"/> Other Misconduct <input type="checkbox"/> Exonerated <input type="checkbox"/> Unfounded <input type="checkbox"/> Not Sustained <input type="checkbox"/> Sustained   |  |  |   |
| Reviewed by  | With findings of the Investigator  |  | Signature   |
|  | I Concur   | Do not Concur<br><br>(see attached report) |   |
| Lieutenant   |  |  |   |
| Captain  |  |  |   |
| Chief   |                                     |  |  |



# CITY OF VENICE POLICE DEPARTMENT

TOM MATTMULLER \* Chief



**TO:** Chief Tom Mattmuller (via the chain of command)

**FROM:** Lieutenant Andy Leisenring *AL 331*

**DATE:** 5/12/2019

**SUBJECT:** Service Inquiry #2019-004

On May 1, 2019, you assigned me to conduct a service inquiry in order to evaluate the entirety of VPD case #18-002315, which occurred on December 21, 2018, at approximately 2:55 pm. The conclusions of this inquiry should be used to assist with determining the necessity of initiating a formal investigation into this incident in accordance with Standard Operating Procedure (SOP) 112, Personnel Conduct Complaints.

This incident was brought forward to our agencies attention by local media stories that questioned whether or not VPD Officers acted appropriately during the investigation. The primary concern relates to the Defendants level of resistance compared to the officer's use of force. I have included a copy of several of those media reports with this memorandum. Additionally, I reviewed the overall response as it applies to all VPD standards and procedures.

As a part of this inquiry, I have reviewed all reports, statements, documents, and recordings to include more than 11 hours of Watchguard video. This includes primary and secondary camera recordings.

## **INCIDENT OVERVIEW**

### INCIDENT TYPE

Officers were dispatched to a report of a burglary in progress at 281 US41 Byp N., Motel 6, room #135.

### INITIAL DISPATCH INFORMATION

The call was added into the CAD system by dispatch at approximately 11:10 am and VPD Officers were dispatched at approximately 11:11 am. The responding officers arrived on the scene at approximately 11:14 am.

Prior to the arrival of any units to Motel 6, they were advised by dispatch that the burglary suspect was on scene and was entering the office of Motel 6 and causing a disturbance. It was not known if a weapon was involved. The first suspect was described as a white male with blond hair and was last seen wearing a grey/maroon hoodie. They were also advised a 2<sup>nd</sup> suspect was

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involved and was described as a Hispanic male last seen wearing a dark shirt and had a dog with him. The officers were told the suspects attempted to obtain a key to enter the room and then broke in the window. The caller was in the lobby and the second suspect was in the bushes.

### PRIMARY OFFICERS RESPONSE

Officer Montanez and Officer Creasy were the primary responding officers for this incident. They were assigned to zone 5 and were working from 7am-7pm. Officer Montanez was working as a recruit officer and was in phase III of the Venice Police Department Field Training program. Officer Creasy was assigned as his Field Training Officer (FTO). They both responded in patrol vehicle #1838.

These officers responded from the Venice Municipal Beach parking lot on The Esplanade. While responding to the call their Watchguard video system was activated, in accordance with SOP 805, In-Car Audio/Video Recording. They responded with emergency lights and sirens activated as a priority 1 emergency response in accordance with SOP 400, Police Vehicle Operation.

While responding the officers could be heard conversing with each other and discussing aspects of the response to include watching for hazards such as vehicle traffic and pedestrians. They were also discussing the call information that was provided to them by dispatch. Officer Creasy requested additional units to respond to assist them as backup. Officer Creasy quizzed Officer Montanez on the call information and suspect descriptions as they were approaching the scene. Officer Creasy directed Officer Montanez to watch for anyone matching those descriptions walking away from the incident location. They turned off the patrol car siren as they approached Motel 6.

### CONTACT WITH SUSPECT ETHAN WATERS:

As they arrived on scene Officer Montanez stated "there he is, there's homie right there" indicating he recognized Waters as matching the suspect description provided to them by dispatch. This suspect could be observed standing near the northeast corner of Motel 6 wearing a grey and maroon hoodie as they arrived. Officer Montanez then stated "Oh God, this mutha" and let out a loud sigh. This indicated to me that he may have had contact with this suspect at a previous time. It was later determined Officer Montanez mistook the suspect for another individual he had recent contact with. The suspect at Motel 6 was later identified as Ethan Skyler Waters, w/m, 9-8-1999.

Officer Creasy directed Officer Montanez to meet with the complainant who was outside standing near the lobby door while he made initial contact with Waters.

When they arrive, Waters could be seen on the Watchguard video standing upright appearing to have his right hand hidden from view in his pants pocket and his left hand holding what appears



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to be a cell phone to his left ear. Waters then turns towards the officers and the patrol vehicle, which had its emergency lights still activated.

An employee from Motel 6 could be heard pointing out Waters to the officers that he was the person who broke into the hotel room by stating "he broke into a guest's room." Officer Creasy confirmed Waters was the person she was referring too by pointing directly at him and she confirmed by stating "he broke into the room through the window, yeah." Waters could be seen walking towards the officers.

Officer Creasy gives orders a lawful command to Waters to put the phone down and pointed at the ground. He repeated this command multiple times. Waters pulls his right hand out of his pocket and lowers the phone, but does not put it on the ground. Officer Creasy directs Waters to stand against the wall of Motel 6 however, Waters begins to walk past him and yelling "whoa, whoa, whoa." Officer Creasy then grabs a hold of his arms and holds him against the wall. Waters could be seen pushing his body back against Officer Creasy. He began to yell at the officers that "you don't have this right" both verbally indicating and physically not complying with the lawful commands. Waters continued to push back against Officer Creasy and Officer Creasy pulled Waters down to the ground while giving him verbal commands to get on the ground. Waters could then be seen continuing to resist the officers by kicking his legs and attempting to push himself up off the ground with his right hand. He continued to yell "you don't have the right." Waters continued to kick and Officer Montanez ordered Waters to put his hands behind his back. Officer Montanez states to Officer Creasy that he is going to use his Taser and Officer Creasy responds, "no, you're not." Officer Montanez continued to order Waters to put his arm behind his back and Officer Creasy talks Officer Montanez through how to gain control of his arms. Officer Atwell arrives on the scene to assist and Officer Montanez was able to begin handcuffing Waters. Waters began saying "okay, okay, okay" and stopped kicking and physically resisting the officers. Once Waters stopped resisting he was easily detained in handcuffs. He was secured in handcuffs at approximately 11:15 am. The use of force used by the officers was in accordance to SOP 190, Use of Force and Levels of Resistance (See heading Defendants Level of Resistance and Officers Use of Force for additional information). Officer Montanez walked Waters to the front of his patrol vehicle and began a search in accordance with SOP 200, Arrest Procedures, and SOP 805, In-Car Audio/Video Recording.

While Waters is in front of the patrol vehicle he can be seen turning his body back and forth, pulling away from the officers, and yelling at the officers "you don't have this right" and "you guys have to tell me what's going on" demonstrating he is still not compliant with the officers. He continued to verbally challenge Officer Montanez after other assisting officers leave them to look for the second suspect. Officer Montanez can be heard using one curse word in an effort to gain compliance from the suspect after they were left alone by the other officers. Under normal circumstances, the sole use of this curse word could be considered to be in violation of SOP 114,

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Rules of Conduct. However, in this case, it seemed reasonable considering Officer Montanez was the sole officer attempting to maintain control of a non-compliant felony suspect.

The suspect continues to yell at Officer Montanez but later apologizes to him for his actions. He tells Officer Montanez his mother stays at the hotel. He repeatedly asks Officer Montanez and other officers on the scene if they know his name and who he is.

While standing in front of the video an abrasion could be seen on Waters' forehead. He is then secured inside a patrol vehicle while the investigation continued.

Waters was sat in the rear seat of patrol car 1838 and could be seen on the secondary camera attempting to open the door with his hands. He could also be seen banging his own face and forehead multiple times into the bars covering the patrol car window. Waters could also be seen pulling the handcuffs from around his back to the front of his body. All actions of non-compliance and resistance.

### CONTACT WITH SUSPECT JOHN FEGLEY:

Officer Montanez could be seen observing and identifying the second suspect to Sergeant Gregoire, who was later identified as John Kenneth Fegley, w/m, 3-6-1973, on the east side of Motel 6. Officer Montanez verifies the second suspect description with dispatch prior to approaching Fegley. As Officer Montanez and assisting officers approach Fegley they can no longer be observed on his patrol car's video system however, the audio was still recording.

Officer Montanez could be heard repeatedly ordering Fegley to "turn around and put your hands behind your back." Fegley could be heard continuously yelling at the officers. Shortly after, Officer Montanez advises dispatch that he has the two suspects detained.

Fegley is moved to the front of vehicle 1838 and searched. Officer Montanez tells Fegley that he matched the description provided to him. Officer Montanez advised Fegley of his Miranda rights. Fegley responds that he knows his rights, indicating he may have had prior contact with law enforcement as a criminal suspect. After being advised of his Miranda rights, Fegley replies "Sir, I understand." Officer Montanez explains the circumstances of the call VPD received. While they were speaking it begins to rain and Officer Montanez moves Fegley to a roof covered area to get him out of the rain.

Once both suspects were detained, Officer Montanez was able to work through the investigation by interviewing Fegley, the caller, and witnesses. Fegley can be heard admitting to smoking marijuana prior to the incident. Fegley also apologizes to Officer Montanez about initially not cooperating with the officers. He also states he understands he can be charged for having the pipe he uses to smoke marijuana.

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Officer Creasy can be seen meeting with Motel 6 staff and assisting Officer Montanez by providing direction to him regarding the investigation.

Officer Montanez searched Fegley's backpack after being arrested and located an unknown white substance (at the time suspected to be a controlled substance) and marijuana. Fegley states the white substance is Novocain. He did not have the substance in a prescription bottle.

### ADDITIONAL INVESTIGATION BY THE PRIMARY OFFICERS:

Officer Montanez can be heard speaking on the telephone with Michael Cameron. Cameron's voice cannot be heard on the audio recording. He then states he is going to room #135 and can later be heard speaking with an unknown female about pills in the motel room. Officer Montanez requests a female Sarasota County Sheriff's Office (SCSO) Deputy to respond to the scene in reference to the female and later cancels this request.

Officer Montanez calls Michael Cameron back on speakerphone, but I was unable to make out Cameron's statements on the audio recording. After the conversation Officer Montanez relays to Officer Creasy that Cameron does not want Waters to go to jail.

Officer Montanez further explains to Officer Creasy that Cameron stated Waters was allowed to be in the motel room.

The Motel 6 staff reiterated that they were told by Michael Cameron that morning that Waters was not allowed to enter his motel room and that Fegley was hiding in the bushes. Officer Montanez and Officer Creasy obtained written affidavits regarding this information.

One of the suspects could be heard apologizing to Officer Montanez again about their actions when the Officer's first made contact with him.

### SUSPECT WATERS - TRANSPORT TO JAIL

Officer Montanez and Officer Creasy transported Ethan Waters to the Sarasota County Jail and Fegley was transported to jail by Officer Kuchar at approximately 12:40 pm. During the transport, Officer Creasy relayed to Officer Montanez that they were not going to charge the suspects with burglary.

Waters stated to the officers "ya'll been pretty cool with me, lately" in appreciation of the way the officers had been treating him. He also had remorse for resisting the officers and said he should have "just did it" when he was told to comply and he understands that now.

They engaged in general conversation during the remaining of the transport. Officer Creasy and Montanez provided Waters with encouragement regarding life decisions and how he can succeed.



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At the jail, Waters admitted to the officers that he uses marijuana and has been speaking with a friend about getting "sober."

When they arrived at the jail they could not drive into the jail due to a mechanical problem with the garage door. Therefore they had to stand outside wait until they could walk inside. Waters was advised to cooperate and Waters stated he understood because "I already resisted," but indicated he would cooperate. Waters admitted he became too animated when he first had contact with the officers and agreed he should not have been fighting with the officers. Waters stated, "when it comes down to it ya'll are the ones with the badges and uh your job is uh protecting." Waters also stated to Officer Montanez that he could tell Officer Montanez takes pride in everything he does.

Officer Montanez continued to provide supportive advice to Waters and stated he would pray for him and hoped he would stay out of trouble.

Waters was then escorted into the jail for booking and no other relevant information could be heard on the audio recording.

### ASSISTING OFFICER ACTIONS

**Lieutenant Resch** was assigned as the Watch Commander from 7am-5pm and responded in patrol vehicle #1837. Lt. Resch responded to the scene at approximately 11:14 am from the area of Knights Trail and E Laurel Rd and he arrived on the scene at approximately 11:19 am.

While responding to the call the Watchguard video system was activated, in accordance with SOP 805, In-Car Audio/Video Recording. ~~The audio for the Watchguard system was not activated.~~ He responded with emergency lights and sirens activated as a priority 1 emergency response in accordance with SOP 400, Police Vehicle Operation.

He parked his patrol vehicle closely facing Motel 6 and the audio was not activated so the camera did not pick up much activity.

Based on what could be observed in other vehicle Watchguard videos, Lt. Resch was observed assisting with calming down Fegley and observing the actions of the officers at the scene.

There is no supplemental report from Lt. Resch for this case.

Lt. Resch left the scene at approximately 12:21 pm.

**Sergeant Gregoire** was assigned as the shift supervisor from 7am-7pm and responded in patrol vehicle #1772. Sgt. Gregoire responded from the Venice Police Department at approximately 11:15 am and he arrived on the scene at approximately 11:16 am.

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While responding to the call the Watchguard video system was activated, in accordance with SOP 805, In-Car Audio/Video Recording. The audio for the Watchguard system was not activated and he was logged in under the wrong name (Sgt. Hammett). He responded with emergency lights and sirens activated as a priority 1 emergency response in accordance with SOP 400, Police Vehicle Operation.

He parked facing US41 Bypass on the northeast side of Motel 6 and after he arrives Sgt. Gregoire is visible looking around the parking lot and bushes with other officers on the scene. They then leave the view of the camera. No other useful information was gained from the video.

In the video from other vehicles Sgt. Gregoire could be seen assisting officers and speaking with a Motel 6 staff member.

Sgt. Gregoire authored a supplemental report stating that he assisted with searching for the second suspect when he arrived. He observed that Waters was upset and yelling so he assisted Officer Montanez with having Waters sit in the back seat of Officer Montanez's patrol car. He then assisted with apprehending Fegley who was identified as the second burglary suspect.

Sgt. Gregoire describes grabbing ahold of Fegley and Fegley began to pull away, tense up. He reported he took Fegley to the ground with a leg sweep. He described working with Officer Atwell and Officer Creasy to gain control of Fegley as Fegley struggled with them.

Sgt. Gregoire could be heard cursing at both suspects a few times on the recording from vehicles 1838 and 1668 during the apprehension process.

~~Sgt. Gregoire left the scene at approximately 12:40 pm.~~

**Officer Atwell** was assigned as a patrol officer in zone 4 from 5 am – 5 pm and responded in patrol vehicle #1668.

He responded to the scene at approximately 11:13 am and his camera was activated at 11:14 am when he was near US41 Bypass and E Venice Avenue.

He did not need to use emergency lights and sirens due to being so close to the scene and arrived in about 1 minute.

He did activate his Watchguard system in accordance with SOP 805, In-Car Audio/Video Recording.

Officer Atwell stopped his patrol car on the north side of Motel six. It appears he did not put the vehicle in park because it begins to slowly roll forward toward the building until it stops after hitting either the curb or a parking block.



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Officer Atwell first assists Officer Creasy and Officer Montanez with detaining Waters as previously described. The audio of that portion of the incident could be heard on his video.

Officer Atwell then assisted with locating and apprehending Fegley and Atwell could be heard running around.

Sergeant Gregoire could be heard verbally confronting Waters about why he moved the handcuffs from behind his back to the front of his body.

Officer Atwell cleared the scene at approximately 11:50 am. He completed a supplemental report for this case.

**Officer Kuchar** was assigned as a patrol officer in zone 7 from 7 am-7 pm and responded in patrol vehicle #1589. Officer Kuchar responded at approximately 11:15 am from the area of E. Venice Ave and Country Club. He responded with his emergency lights activated in accordance with SOP 400, Police Vehicle Operation and arrived on the scene in approximately 1 minute. His vehicle's Watchguard video system activated in accordance with SOP 805, In-Car Audio/Video Recording.

When he arrived on scene Waters was standing in front of Officer Creasy's patrol car and was being detained.

Officer Kuchar assisted with locating Fegley and could be heard running around. After Fegley was apprehended and was being walked to the patrol cars Fegley was apologizing for his actions.

Fegley was later placed in the rear of Officer Kuchar's patrol car. Prior to that he was searched by Officer Montanez in front of the patrol car and Fegley could be seen attempting to turn around while being searched. Officer Atwell assisted with keeping him facing the patrol car.

Officer Kuchar asks Fegley about why he does not have the Novocain in a prescription bottle and Fegley said his dog chewed it up.

Officer Creasy could be heard speaking with Michael Cameron on speakerphone and Cameron could be heard saying that Waters was not allowed to have a key, but was allowed to go inside his room (#135). Officer Kuchar then talks to Officer Creasy about not being able to charge anyone due to this new information coming to light and they would probably release them.

The video from this car stopped recording prior to Officer Kuchar transporting Fegley to jail. It is unknown why the original thought to release the Defendants after determining there was not enough evidence to substantiate a burglary was later modified.

**Officer Henderson** was assigned as a patrol officer in zone 2 from 5 am – 5 pm and responded in patrol vehicle #54. He responded to the scene at approximately 11:14 am from the area of W. Miami Ave and Nassau St.

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While he responded his Watchguard video system activated, but the audio did not turn on. He did respond with his emergency lights and sirens activated as a priority 1 response in accordance with SOP 400, Police Vehicle Operation.

Officer Henderson arrived on the scene at approximately 11:16 am. When he arrived Waters had already been detained and was standing in front of Officer Montanez's patrol vehicle. He parked his patrol car on the northeast corner of Motel 6 facing US 41 Bypass.

In this video, you can see officers walking and running around and were in the process of looking for the second suspect. Because the video was facing the road and the audio was not activated I was unable to obtain any other useful information from this video.

Officer Henderson left the scene at approximately 11: 25 am. He did not write a supplemental report to document his actions.

### **911 CALL INFORMATION**

The caller advised Waters was asking for a key to get into room #135 and she would not provide him a key because he is not registered to the room. Additionally, the person who is registered to the room specifically told her by phone not to let Waters into the room. After Waters was denied access to the room he then broke into the room by going through the window. A housekeeper observed Waters "breaking into the room" through the window. The caller advised Waters was approaching her and she was not sure if she was safe. Fear could be heard in the caller's voice as she attempted to describe Waters' physical attributes to dispatch. She was able to describe Waters as a white male, just under 6', with lighter hair (dirty blond), wearing a maroon and grey hoodie. The caller stated the second suspect had a dark shirt and a dog and was hiding behind bushes as the police sirens could be heard approaching.

### **WITNESS AFFIDAVITS**

Three written statements were collected at the scene from Jacqueline Armstrong, Andrea Flores, and C. Schmitz, who are employees of Motel 6. Copies of all three statements are included with this memorandum.

### **PREVIOUS VPD CONTACT WITH THE DEFENDANTS**

Although Waters has had numerous contacts with law enforcement and previous arrests the only previous contact with the Venice Police Department that I could locate was in April 2017 when he was a juvenile and was contacted by a Venice High School SRO about sending an inappropriate email to another Venice High student (VPD case# 17-000893). None of the officers involved in this incident were involved with that investigation.

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When Officer Montanez first saw Waters he thought he was another person he had contact with in the past who looked similar to Waters. Officer Kuchar and Officer Creasy appeared to think the same thing, based on comments heard on the Watchguard video. Officer Kuchar checked a couple of times to verify it was not the same person.

Although Fegley has had numerous contacts with law enforcement and previous arrests I was unable to locate any formal contacts with the Venice Police Department prior to this incident. Officer Kuchar spoke with Fegley as if he had met him in the past during the course of his duties, but not as a criminal suspect.

### INTERVIEW MICHAEL CAMERON

I attempted to reach Michael Cameron by using two telephone numbers that have recently been associated with his name. However, the first number 941-237-9704, which he used when the incident happened, was out of service. I then called another number, 941-254-0350, which is listed in public records as a cell phone number associated with Cameron. The male who answered stated he did not know Cameron.

### INTERVIEW JARED HALSTEAD

Halstead is the General Manager of Motel 6. I contacted him by telephone to see if he could provide any additional information regarding this incident since his interview was not documented in the incident report.

Halstead advised he arrived at Motel 6 after most of the incident was over and the suspects were in custody. ~~So most of what he knows about the incident is based on what the police advised him on the scene and what his Motel 6 team members reported.~~

He did clarify that neither one of the Defendants were registered guests at Motel 6.

He was aware that Waters spoke with Jacqueline Armstrong and requested a key to get inside room #135. Before doing so, Armstrong called Michael Cameron to get permission to provide a key, since he was the registered guest for that room. She was advised by Cameron not to give Waters a key and Waters was not allowed into the room. It appeared to him that Michael Cameron was either the boyfriend or husband of Waters' mother.

After Waters was arrested it appeared that Michael Cameron changed his story and stated Waters was allowed to enter his room.

In regards to Fegley, he was not exactly sure how he was involved other than he was not a registered guest and his team members reported it appeared he was hiding in the bushes when the incident took place and they thought he was involved.



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### REVIEW OF DEFENDANT'S LEVEL OF RESISTANCE AND OFFICERS USE OF FORCE

There are many factors to be considered when a law enforcement officer uses force and there are varying degrees of force that may be applied when a person resists a law enforcement officer who is engaged in the execution of a legal duty, acting in good faith, and is known, or reasonably appears, to be a law enforcement officer. No two situations are the same and officers must rely on training, experience, and situational awareness when determining what amount of force to use to regain control of a situation. An officer's primary goal when using force is to gain control as quickly as possible in order to protect the community and themselves.

In this case, all of the responding officers were on-duty, in full uniform, in fully marked patrol cars, and were clearly engaged in the execution of their legal duty as they were responding to a 911 call regarding a burglary in progress at Motel 6. The red and blue emergency lights were activated and visible from responding patrol cars and sirens could be heard as they approached the scene. This was confirmed on the 911 call by the reporting party who stated she heard sirens approaching. A burglary is listed within the definition of a 'forcible felony' by Florida statutes.

The officers who used force in order to stop the resistance that was given to them by the Defendants were clearly acting in good faith. In addition to the initial report of a burglary in progress and the descriptions of the suspects being given to the officers by dispatch, the Defendant Waters was specifically identified by employees at Motel 6 as being the one who committed the burglary. An identified citizen who is reporting a crime is considered to be a highly reliable source of information.

~~Aside from the responding officers witnessing the crime themselves, this witness identification is the most reliable form of information available for them to act upon.~~

#### Ethan Waters Level of Resistance:

When the officers approached Waters they were aware that two suspects were involved in the reported burglary. Because only one suspect was visible to them it increased the need to quickly detain him in order to prevent the possibility of being ambushed by a second suspect. This thought was articulated by Officer Montanez after Waters was detained and could be heard on the Watchguard video from his patrol car.

Seeing Waters with one hand concealed in his pocket would be a concern to any officer. Being able to see a suspect's hands is crucial. Waters talking on a cell phone is also a concern because he could be coordinating with the reported second suspect.

When the officers approached Waters with the emergency lights activated in their patrol cars and gave him lawful commands he should have immediately complied.

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In this case, Officer Creasy repeated his commands multiple times. When Waters attempted to walk past Officer Creasy and was verbally saying "whoa, whoa, whoa" he was indicating he was not complying with those commands. Had Waters complied with the commands it is likely no additional use of force would have been required.

After being directed to the wall by Officer Creasy, Waters pushed away from the wall and physically pulled away from the officers and pushed his body against Officer Creasy. Had he not used this physical resistance against the officers it is likely no additional use of force would have been required.

Officer Creasy used a takedown technique that pulled Waters to the ground by his arm. This type of technique is a low-level use of force and soft empty hand technique intended to gain control of subjects who are actively resisting as Waters clearly was. It is likely that after this technique was applied if Waters had discontinued resisting, no additional use of force would have been required.

Instead of complying with the officers, Waters began to kick his legs and refused to put his arms behind his back. He was verbally stating "you do not have this right" also indicating he was not complying with the officers.

Officer Creasy and Officer Montanez were communicating with each other while attempting to gain control of Waters indicating they were in control of their actions and thinking about how to best gain control while using those most minimal force necessary to do so. At one point in the video Officer Montanez could be heard saying he was going to deploy his Taser and Officer Creasy advised him not too. ~~Officer Creasy was also directing Officer Montanez on how to get Waters hands behind his back.~~

Even after a third Officer arrived on the scene to assist with detaining Waters (Officer Atwell) Waters could be seen kicking his legs, tensing his arms, and attempting to prevent the officers from placing handcuffs on him.

Once Waters stopped resisting, the officers were able to handcuff him, and no further use of force was required.

After Waters was secured and searched the officers rendered care by requesting EMS to respond to exam Waters due to having a visible abrasion on his head. When Officer Creasy used the takedown technique, Waters did not strike his head. If he had discontinued resisting at that point, or any point prior to that, it is likely he would not have sustained that minor injury. It appeared the injury took place after Waters began kicking and pulling his arms away from the officers causing them to pin his body to the ground.

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TOM MATTMULLER \* Chief

It was clear during this portion of the encounter with Waters that his actions and levels of resistance determined the officer's response and use of force applied. The officers escalated and de-escalated their actions accordingly.

### John Fegley's Level of Resistance:

Due to this portion of the incident having taken place outside of the view of the patrol car camera's I had less information available to review. I was able to hear some of the audio from the videos and review the officer's documentation of the incident.

Sergeant Gregoire reported that the Fegley's actions and body language prior to Officer Montanez giving Fegley lawful commands gave him concern. He stated Fegley was walking away from them quickly and had a fearful look on his face.

Officer Montanez gave multiple lawful commands to Fegley ordering him to turn around and put his hands behind his back. It is likely that if Fegley had complied with these commands no use of force would have been necessary.

Sergeant Gregoire reported he grabbed a hold of Fegley's arm in order to detain him after he failed to comply with the verbal commands. He stated that Fegley tensed up and began to pull away from him. It is likely that if Fegley had not physically resisted Sergeant Gregoire that no further use of force would have been necessary.

Sergeant Gregoire reported using a leg sweep as a takedown technique in order to gain control of Fegley. This technique is a low-level use of force and soft empty hand technique intended to ~~gain control of subjects who are actively resisting as Fegley clearly was.~~ It is likely that if Fegley had discontinued resisting at this point that no further use of force would have been used.

Fegley could be heard yelling at the officers and stating "it wasn't me." Once Fegley was secured in handcuffs no further use of force was required.

The officers rendered care to Fegley by having EMS respond and when it began to rain they took him out of the rain and under shelter. It appeared Fegley had an abrasion on his forehead from the encounter.

It was clear during this portion of the encounter with Fegley that his actions and levels of resistance determined the officer's response and use of force applied. The officers escalated and de-escalated their actions accordingly.

### Additional Information:

Officer Creasy was the officer who used the takedown technique to control Waters. Officer Creasy is a certified high liability instructor and certified defensive tactics instructor in the State of Florida. He is currently the lead defensive tactics instructor for the Venice Police Department.



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His training and experience are above that of the average officer as it relates to when the use of force is necessary, the degree of force needed to gain control of a resisting suspect, and how to properly apply it.

Sergeant Gregoire was the officer who used the takedown technique to control Fegley. Sergeant Gregoire is a certified high liability instructor and certified defensive tactics instructor in the State of Florida. His training and experience are above that of the average officer as it relates to when the use of force is necessary, the degree of force needed to gain control of a resisting suspect, and how to properly apply it.

After both Defendants were secured and calmed down they could both be heard apologizing to the involved officers for their resistance. Waters later stated his appreciation for how he was being treated by Officer Montanez and Officer Creasy.

### STATE ATTORNEYS RESPONSE

As it relates to both Defendants the State Attorney's office agree the officers acted in good faith when they detained the suspects. After initial review, both Defendants were charged by the State Attorney's Office with resisting arrest and Fegley was additionally charged with possession of marijuana under 20 grams, and possession of drug paraphernalia.

After further review and taking all aspects of the case into consideration to include the information that neither Defendant actually committed a burglary, the State Attorney's office determined it would be in the "interests of justice" to drop the charges against the Defendants.

### AREAS IN NEED OF IMPROVEMENT

I have reviewed all documentation and video footage available related to this case. Although the officers involved in this case performed well overall, as in every call for service or investigation, areas of improvement can be identified. In reviewing this investigation I have identified the following as areas for agency and/or individual officer improvement:

- *Report Writing, Probable Cause Affidavit (PCA), and other Documents were not completed to VPD standards.*
  - The reports and PCA's are lacking important information and can be difficult to read and to identify the information necessary to form a conclusion. It is possible that better documentation would have led to fewer questions regarding what took place during this incident.
    - The standard VPD report writing format was not used. The reports by Officer Montanez and Officer Creasy appear to one large paragraph encompassing a lot of different topics and information.
    - Several grammatical and spelling errors are present.

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- Information is missing in the person's section of the report to include that of Michael Cameron.
  - There is no interview information from Michael Cameron within the narrative. Since he is the registered guest of room #135 this information is crucial.
  - The interview with Michael Cameron's girlfriend is missing.
  - The interview with the General Manager of motel 6 is missing.
  - Officer Creasy spoke with the caller and other witnesses but does not include interview statements in his narrative.
  - The PCA's do not contain enough information and do not explain that it was determined after an investigation that a burglary did not occur.
  - Levels of Resistance Reports (LOR's)
    - Some of the LOR's are missing the psychological intimidation factor that was involved.
    - The Officer's improperly listed contributing factors (i.e. 3 officers and 1 suspect was a contributing factor for using force).
- 
- *Officer Montanez was left alone with a suspect who was resisting arrest.*
    - While officers were looking for the second suspect Officer Montanez was left alone with Waters, while standing in front of his patrol car, who was still exhibiting non-compliant behavior. There were plenty of officers on the scene to both look for the second suspect and assist Officer Montanez.
- 
- *Officer Montanez was not driving the patrol car as a recruit officer in phase III of the FTO program.*
    - Phase III is the final training phase of the FTO program and recruits must achieve a minimum score in all rated categories. Safe operation of a patrol car as a police officer is one of the most crucial aspects of the job. In this case, the FTO was unable to document his performance in normal vehicle operation or in emergency vehicle operation for this incident. This does not allow for accurate documentation of the recruit's overall performance.
- 
- *Officer Atwell did not put is patrol car in park when he arrived on the scene to assist.*
    - In the Watchguard video, it is apparent that when Officer Atwell arrived on the scene he exited his patrol car and did not put the transmission in park. The patrol car could be seen slowly rolling towards Motel 6 before it is stopped when it ran into the curb or one of the concrete parking blocks.

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- *Some officers did not properly use the Watchguard video system.*
  - The audio was not activated by Lieutenant Resch in vehicle 1837.
  - The audio was not activated by Sergeant Gregoire in vehicle 1772.
  - Sergeant Gregoire did not log into the system as it showed Sergeant Hammett's name on the display screen.
  - Officer Henderson did not activate the audio system in vehicle 54.
  - The video in Officer Kuchar's vehicle turned off prior to transporting Fegley to jail in vehicle 1589.
- *Officers could have used better discretion when determining to arrest both Defendants.*
  - At the conclusion of the investigation, it was determined that there was insufficient evidence to prove that Waters committed a Burglary. Although the officers were within legal guidelines and department policy when making the arrest officers have greater latitude for discretion when making arrests in cases that involve single misdemeanor charges. As indicated by the State Attorney's Office the overall interests of justice should be considered.
  - Again, in the case of Fegley, the officers were within legal guidelines and department policy when making the arrest however, there were mitigating factors that could have been considered. At the conclusion of the investigation, it was determined that Fegley was never involved in a Burglary. He was found to be in possession of a small amount of marijuana (less than 20 grams) and drug paraphernalia (a pipe used to smoke marijuana). Although he was not charged with it, he also had medication that requires a prescription (Novocain) without evidence of having a valid prescription. All of these are misdemeanors and Fegley reported to officers that he has been diagnosed with stage 4 cancer. He stated to the officers that he self-medicates with marijuana and uses the Novocain to assist with gum pain after losing his teeth from Chemotherapy. Officer Kuchar seemed to be aware of his medical condition from previous contact(s) so it is unlikely Fegley was being untruthful about this. All of these factors should have been considered when determining if the overall interests of justice were being met when he was transported to jail.

### RECOMMENDATIONS

Based on the aforementioned areas in need of improvements I am making the following recommendations:

- 1) Officer Creasy is a Field Training Officer and has since been promoted to Master Patrol Officer. Because of his important role in teaching officers how to write reports, the



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importance of Officer Creasy producing a quality report in general, and for his growth and potential as an employee, I recommend the Training Manager develop a lesson plan for improving his report writing skills. I also recommend a supervisor is assigned to review his progress and follow up to ensure VPD report writing standards are being met going forward.

As it pertains to Officer Montanez, at the time he wrote this report and completed the associated paperwork he was in training. It is known to me as his current supervisor that he has made many improvements in his report writing ability and I believe he has corrected the problems depicted in this investigation.

- 2) We should review the contributing factors portion of the Levels of Resistance report form with all VPD officers. There seems to be a lack of understanding on how to complete this portion of the form. I also recommend the Training Manager, and the lead Use of Force Instructor review this form and recommend any changes that would make it more user friendly (i.e. there is currently insufficient space for officers to write comments and the typed words get smaller and become difficult to read) and to ensure we are capturing all of the information we require.
- 3) It should be re-emphasized to our FTO's that the recruit officers driving abilities are important attributes to be documented every day and even more so in the final phase of instruction.
- 4) A supervisor should review with Officer Atwell what happened with his patrol car to ensure he is aware he did not leave it in park and how to prevent this in the future.
- 5) The Level of Resistance reports that need correction should be returned to those officers.
- 6) Supervisors should review with their assigned officers what the requirements are per policy for using the Watchguard video system.

From September 2018 to January 2019, shift Lieutenants were directed by Captain Rose to conduct two random inspections of Watchguard video use for each assigned officer to ensure the system was being used in accordance with agency policy. The results of those reviews should be evaluated to identify any officers who require additional assistance or correction.

Another contributing factor to the lack of audio use is that when the microphone is being charged it has to be completely turned off. If an officer responds to a priority call at the

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beginning of their shift, before having an opportunity to inspect their equipment, it is likely the audio will not be activated. This was not a factor for all of the officers in this case but should be reviewed to see if there are ways to mitigate the problem.

- 7) Because every circumstance is different I do not suggest having a blanket policy of not making an arrest when the only charge is for resisting without violence. However, I do recommend changing policy to state that when resisting without violence is the only charge, permission must be obtained by the Watch Commander before transporting a Defendant to jail and the Watch Commander shall be required to review all known aspects of the investigation before making the approval.

### CLOSING SUMMARY

Although there are several areas that were identified as in need of improvement, overall the officers who responded to this report of a burglary in progress acted reasonably and within agency policy. When the officers detained the Defendants and placed them under arrest they were acting well within legal guidelines and agency policy. The amount of force used was reasonable considering all of the factors involved.

There was miscommunication, at the very least, between Michael Cameron and the Motel 6 staff and neither of the Defendants were registered guests at the Motel. This, and other factors, all led to the belief that a forcible felony was in progress.

The actions and conversations had by Officer Creasy and Officer Montanez when responding to the call and while on scene demonstrate the officers were aware of their surroundings, aware of the call information, and aware of the potential threats posed by this type of call. They continued to talk to each other while attempting to gain control of Waters. They maintained calm and appeared to be fully in control of their actions. The officers used multiple methods to document their actions to include video, digital photographs, and written reports to ensure all aspects of the case were recorded and available for internal and external review.

The videos portrayed in the media reports that led to this inquiry show only minutes of an incident and investigation that lasted several hours. Later in the videos, both Defendants apologized to the officers for resisting them. In the case of Waters, a pleasant conversation took place between him and the arresting officers during transport to the jail and continued after they arrived. The officers offered supportive recommendations to assist Waters with changing his mind set in life and staying out of trouble. One of the officers even offered to pray for Waters. Waters seemed genuinely appreciative of the way he was being treated. Unfortunately, since this incident happened, Waters has been subsequently arrested by other law enforcement agencies for controlled substance violations and for failing to appear in court.

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TOM MATTMULLER ★ Chief

Overall the officers involved with this investigation portrayed the vision, mission, principles, and philosophies of the Venice Police Department and with the recommended changes our agency will be even more prepared to protect and serve the City of Venice.

Respectfully submitted,



Lt. Andy Leisenring, #331

Enclosures:    USB Thumb Drive with Watchguard Videos and 911 Recording  
                    Citizen/Police Complaint Form (1 page)  
                    Dispatch CAD Screen (1 page)  
                    Dispatch Chronology Report (7 pages)  
                    Incident Report (3 pages)  
                    Probable Cause Affidavits (4 pages)  
                    Witness Affidavits (3 pages)  
                    Cost Affidavits (2 pages)  
                    Level of Resistance Reports (12 pages)  
                    Property Evidence Forms (2 pages)  
                    Motel 6 Room Registration Form (1 page)  
                    SAO Charging Documents (5 pages)  
                    SAO Nolle Prosequi Memo (1 page)  
                    Local Media Reports (18 pages)